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UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D C 20230

DEC 11 2003

Ms Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S W
Washington, DC 20554

Re *Reply Comments, Wireless Telecommunications Bureau Seeks Comment on MariTel Inc.
Petition for Declaratory Ruling and National Telecommunications and Information
Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels
87B and 88B, DA 03-3585, RM-10821.*

Dear Ms Dortch:

Please find enclosed an original and two (2) copies of the letter from Fredrick R. Wentland, Associate Administrator for Spectrum Management, National Telecommunications and Information Administration, to John B. Muleta, Chief of the Wireless Telecommunications Bureau, Federal Communications Commission, for inclusion in the public record in the above-referenced docket

Please direct any questions you may have regarding this letter to the undersigned. Thank you for your cooperation.

Respectfully submitted,

Kathy D. Smith
Chief Counsel

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Enclosures

STABOPE



DEC 11 2003

Mr John B. Muleta
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
The Portals
445 Twelfth Street, S W
Washington, DC 20554

Re Reply Comments: Wireless Telecommunications Bureau Seeks Comment on MariTel Inc
Petition for Declaratory Ruling and National Telecommunications and Information
Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels
87B and 88B, DA 03-3585, RM-10821.

Dear Mr Muleta

The National Telecommunications and Information Administration (NTIA) manages and authorizes the Federal Government's use of radio frequency spectrum. The Federal Communications Commission (FCC) recently issued a Public Notice seeking comments on a petition for declaratory rulemaking submitted by MariTEL, Inc. (MariTel) and a petition for rulemaking submitted by NTIA.¹ As set forth herein and in the attached Reply Comments of the U.S Coast Guard (Coast Guard), the FCC should deny MariTel's Petition and should designate Channels 87B and 88B exclusively for Automatic Identification System.

MariTel's petition urged the FCC to rule that shipborne AIS transmitters may not operate on channels 87B and 88B or any other channel designated for use by VHF public coast (VPC) shore stations. NTIA's petition urged the FCC to work with NTIA to allocate Channels 87B and 88B exclusively for AIS use by both Federal Government and non-Federal Government users on a shared basis nationwide.

The comments submitted in response to the FCC's Public Notice were overwhelmingly in support of NTIA's petition.² The commenters recognize that designating Channels 87B and 88B would ensure that the maritime safety and homeland security needs of the U.S. would be met. Moreover, these commenters recognize that designating these channels for AIS is consistent with

¹See Wireless Telecommunications Bureau Seeks Comment on MariTel, Inc. Petition for Declaratory Ruling and National Telecommunications and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B, *Public Notice*, DA 03-3585 (November 7, 2003).

²See e.g., Lockheed Martin Corporation Comments at 1-2; National Marine Electronics Association Comments; Boat Owners Association of the United States Comments. We note that ShipCom LLC submitted Comments that illustrate the complexity of the issues in this matter, further justifying the need for a rulemaking as requested by NTIA.

the designation for AIS in the international table of allocations and consistent with the U S government's international obligations. In its comments, however, MariTel continues to ignore the necessity of this designation, and fails to raise any issues that would warrant the relief it seeks in its petition. Moreover, MariTel fails to recognize that its ability to use these frequencies is limited by the regulatory authority of the United States to determine that another use of the frequencies would better serve the public interest.³ Moreover, MariTel continues to ignore FCC's rules providing that failure to reach accommodation through negotiations could result in the FCC designating channels for AIS at the Coast Guard's request.⁴ NTIA's Petition for Rulemaking is consistent with the FCC's rules in that regard.

MariTel also used this proceeding as an opportunity to present the results of a technical study regarding interference. To ensure that the FCC has a complete record of the technical considerations surrounding the petitions at issue, NTIA intends to supplement these Reply Comments with a technical analysis performed by the Joint Spectrum Center (JSC) at the Department of Defense performed at the request of the Coast Guard. NTIA notes that the ten-day period between the comment and reply comment deadlines was insufficient to permit a thorough technical analysis.

For the foregoing reasons, the FCC should deny MariTel's petition and should designate Channels 87B and 88B exclusively for AIS.

Sincerely,



Fredrick R. Wentland
Associate Administrator
Office of Spectrum Management

Enclosures

cc. Edmond J. Thomas, Chief, Office of Engineering and Technology

³Section 304 of the Communications Act of 1934 provides that "[n]o station license shall be granted by the Commission until the applicant therefore shall have waived any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise." 47 U.S.C. § 304.

⁴*See Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order 13 F.C.C. Rcd. 19853, 19877 (1998). In this Order, the FCC stated that if good faith negotiations failed, the Coast Guard could ask the FCC to revisit the issue and select channels and locations for AIS.



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Mr. Frederick R. Wentland
Associate Administer, Office of Spectrum Management
National Telecommunications and Information Administration
Herbert C. Hoover Building
14 and Constitution Avenue, N.W.
Washington, DC 20230

Dear Mr. Wentland:

Thank you for your continuing efforts to assist the Coast Guard in obtaining internationally recognized radio spectrum required for the implementation of the universal shipborne Automatic Identification System (AIS). Seamless installation of AIS is vital to the continued enhancement of maritime safety and homeland security.

This letter provides, as an enclosure, reply comments to the Federal Communications Commission's (FCC) MarITEL Inc.'s emergency petition for a declaratory ruling regarding the use of VHF maritime channels 87B (161.975 MHz) and 88B (162.025 MHz), Public Notice DA 03-3585, and NTIA's petition for rulemaking 88B, RM-10821. The FCC released these two items for public comment on November 7, 2003 with comments due by December 1, 2003 and reply comments due by December 11, 2003. We ask that the NTIA forward these comments to the FCC in conjunction with any comments the NTIA may provide directly or on behalf of other government agencies.

Coast Guard personnel have twice visited the FCC's Reference Information Center (RIC) to copy the contents of the DA 03-3585 and routinely check the Commission's Electronic Comments Filing System (ECFS). We note that there appear to be certain, timely filed comments, copies of which the originators have provided to the Coast Guard, that have not appeared on the record. We ask that the Commission not make any decisions without considering such comments.

Again, thank you for your continued assistance to the Coast Guard.

Sincerely

A handwritten signature in black ink, appearing to read "C. I. Pearson".

C. I. PEARSON
Rear Admiral
U.S. Coast Guard
By direction

Enclosure

Copy: Kathy Smith, NTIA Chief Counsel
Joel Szabat, DOT OST

MariTEL, Inc.'s Petition for Declaratory
Ruling And National Telecommunications and
Information Administration Petition for
Rulemaking Regarding the Use of Maritime
VHF Channels 87B and 88B

Public Notice DA 03-3585
RM-10821

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Reply Comments of the U.S. Coast Guard

Introduction

The Coast Guard opposes MariTEL, Inc.'s petition for declaratory ruling, and we welcome the comments expressed by all filers on record to date.¹ The comments supporting the National Telecommunication and Information Administration's (NTIA) petition for rulemaking on this matter, as well as MariTEL, Inc.'s own comments, are further evidence of the need to initiate a rulemaking on this issue. Additionally, as outlined below, we disagree with the specific comments filed by MariTEL Inc.² These comments reply only to newly raised matters or to clarify matters raised by MariTEL.

Cessation of VPC Coast Services

As MariTEL indicates, it ceased providing public coast station services on June 6, 2003³. As indicated in earlier filings, MariTEL ceased its VHF Public Coast (VPC) services because of the decrease in the market for traditional voice communications-oriented VPC services.⁴ Although MariTEL has articulated its plans for a future business providing data services to the maritime industry using its VPC frequencies,⁵ MariTEL is not currently making use of its authorized spectrum.

AIS Provides a Limited Communications Capability

Contrary to MariTEL's comments that AIS is "simply a communications tool,"⁶ the internationally adopted AIS standard⁷ prescribes specific intended uses of AIS. AIS

¹ The Comments of ShipCom, LLC, a legacy licensee, raise additional issues that need to be addressed and point to the complexity of the issue, specifically with regard to the treatment of legacy licensees under the two petitions. The Coast Guard believes that these complexities further support the need for a rulemaking as suggested by the NTIA petition for rulemaking. Alternatively, the Commission might consider extending the public comment and reply periods of DA 03-3585.

² MariTEL, Inc. comments to DA 03-3585; RM-10821 (December 1, 2003; hereinafter MariTEL Comments, December 1, 2003).

³ MariTEL Comments, December 1, 2003, ¶ I.A.

⁴ MariTEL, Inc., *Request for Rule Waiver and Extension of Construction Deadline*, March 27, 2003; *Wireless Telecommunications Bureau Seeks Comment on MariTEL, Inc. Request to Extend Construction Deadline for Certain VHF Public Coast Station Geographic Areas Licenses*, DA 03-1484, released May 5, 2003).

⁵ *Id.*

⁶ MariTEL Comments, December 1, 2003, p.3.

⁷ ITU R M1371-1.

equipment certified to this standard for use both domestically and internationally has an extremely limited communications capability. Used as intended by the international standard, AIS equipment and methods cannot support routine communications while at the same time fulfilling it's maritime safety role.

Coast Guard-MariTEL Memorandum of Agreement (MOA)

We note that with the exception of its counsel, no current member of MariTEL's management or its employees participated in any way with the negotiations leading to the signing of the now terminated MOA. As previously articulated, the Coast Guard continues to believe that it was clear to all involved at the time that the Coast Guard's and MariTEL's selection of Channel 87A/B for AIS in the agreement referred to channels that were then, and are currently, defined throughout the Commission's rules and regulations as 25 kHz (wideband) channels. As previously noted, the letter⁸ forwarding the Agreement to the FCC indicating this understanding was coordinated with MariTEL's attorney.⁹

The Coast Guard disagrees with MariTEL's assertion that "on May 5, 2003, MariTEL, pursuant to its authority under the terms of the MOA, terminated the MOA based on its belief that the USCG's [*sic*] had breached, without cure, several provisions of the MOA".¹⁰ Quite to the contrary, the record shows that when MariTEL terminated the MOA it did not assert a breach by the Coast Guard. Rather it terminated the MOA because the Coast Guard and MariTEL had failed to resolve "bandwidth and geography issues".¹¹ These issues, which MariTEL raised for the first time in December 2002, were the topic of various correspondence and meetings between the Coast Guard and MariTEL from December 2002 through MariTEL's termination of the MOA. During these discussions MariTEL proposed a variety of solutions, some involving the Coast Guard and MariTEL being involved in a contractual relationship. These proposals were not acceptable to the Coast Guard for several reasons, including their failure to comply with the regulatory obligations of the Federal Acquisition Regulations (FAR). At a March 18, 2003 meeting with MariTEL at its headquarters in Alpharetta, GA, the Coast Guard advised MariTEL that it, like any other potential contractor, could submit an "unsolicited proposal" to the Coast Guard. MariTEL subsequently submitted such a proposal. Although MariTEL's proposal was carefully evaluated in accordance with the FAR, it could not be accepted on its merits.

MariTEL's Interference Study

The Coast Guard has forwarded MariTEL's previously submitted Galaxy Engineering interference study¹² to the Department of Defense's (DOD) Joint Spectrum Center (JSC) so that JSC can independently conduct a detailed analysis of the interference issue. The

⁸ Commandant (G-SCT-2), U.S. Coast Guard, letter 2400, dated Mar. 15, 2001, and addressed to Mr. Thomas Sugrue, then Chief, Wireless Telecommunications Bureau.

⁹ See Russell H. Fox's e-mail to Joseph Hersey of March 15, 2001, 2:26 P.M. (available upon request).

¹⁰ MariTEL Comments, December 1, 2003, p.8.

¹¹ See MariTEL, Inc., letter dated May 5, 2003, to Chief, Office of Communications, U.S. Coast Guard.

¹² See Galaxy Engineering Services Study of June 16, 2003.

Coast Guard also evaluated the Galaxy Engineering study within the Coast Guard and concluded that the study does not support MariTEL's conclusions regarding the possible effects on its spectrum use. The Coast Guard anticipates that the DOD JSC report will be submitted to the Coast Guard by the end of December, 2003. Although that date will be outside the comment and reply period for this proceeding, when the report becomes available, the Coast Guard will forward a copy of it to the NTIA for inclusion in the record to be considered.

Additionally, MariTEL has forwarded another study prepared by InCode Telecom Group, Inc.¹³ The Coast Guard will not submit this new study for independent analysis but will conduct an in-house review. Although the Coast Guard has not evaluated this study, we note that while it contains additional material regarding the test procedures and a more comprehensive summary, it reaches the same conclusions and utilizes, apparently without change, material previously submitted as part of the Galaxy Engineering study.

The Coast Guard believes that MariTEL's petition for declaratory rulemaking as amended should be denied on its merits. Further, the Commission should undertake a rulemaking as requested by NTIA, and grant the petition as outlined in the NTIA petition, DA 03-3585, RM-10821.

¹³ MariTEL Comments, December 1, 2003, ¶ II.B and exhibit A.